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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,905	05/30/2006	Michael Brines	WP03-1 A04-US	2092

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EXAMINER	
DEBERRY, REGINA M	
ART UNIT	PAPER NUMBER
1647	
MAIL DATE	DELIVERY MODE
06/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/573,905	BRINES ET AL.	
	Examiner	Art Unit	
	Regina M. DeBerry	1647	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,37-45 and 47-69* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1,37-45 and 47-69* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, 37, 39, 41-45, 47, 48, 56, 62-65 drawn in part to a method of treating sepsis (including abdominal sepsis) comprising administering a chemically modified or mutated EPO; and the pharmaceutical composition comprising a chemically modified EPO or a mutated EPO.

Group II, claim(s) 38, 41-45, 47, 48, 56 and 66, drawn in part to a method of enhancing wound healing comprising administering a chemically modified or mutated EPO.

Group III, claim(s) 39, 41-45, 47, 48, 56 and 67, drawn in part to a method for treating adhesion, abnormal fibrous band formation, formation of a connection between organs and scarring comprising administering a chemically modified or mutated EPO.

Group IV, claim(s) 39, 41-45, 47, 48 and 56, drawn in part to a method for treating an inflammatory condition of the prostate comprising administering a chemically modified or mutated EPO.

Group V, claim(s) 39, 41-45, 47, 48 and 56, drawn in part to a method for treating an inflammatory condition of the urinary tract system comprising administering a chemically modified or mutated EPO.

Group VI, claim(s) 39, 41-45, 47, 48 and 56, drawn in part to a method for treating an inflammatory condition of the visceral smooth muscle comprising administering a chemically modified or mutated EPO.

Group VII, claim(s) 40-45, 47, 48 and 56, drawn in part to a method of treating a condition associated with elevated IL-6 comprising administering a chemically modified or mutated EPO.

Group VIII, claim(s) 49-61 drawn to a method for treating the effects of a condition associated with an effect of pro-inflammatory cytokines comprising administering a chemically modified or mutated EPO having an attached PEG molecule.

Group IX, claim(s) 68 and 69, drawn to a method of testing chemically modified or mutated EPO.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of Group I is treating sepsis comprising administering a chemically modified or mutated EPO. The special technical feature of Group II is enhancing wound healing comprising administering a chemically modified or mutated EPO. The special technical feature of Group III is treating adhesion, abnormal fibrous band formation, formation of a connection between organs and scarring comprising administering a chemically modified or mutated EPO. The special technical feature of Group IV is treating an inflammatory condition of the prostate comprising administering a chemically modified or mutated EPO. The special technical of Group V is treating an inflammatory condition of the urinary tract system comprising administering a chemically modified or mutated EPO. The special technical feature of Group VI is treating an inflammatory condition of the visceral smooth muscle comprising administering a chemically modified or mutated EPO. The special technical feature of Group VII is treating a condition associated with elevated IL-6 comprising administering a chemically modified or mutated EPO. The special technical feature of Group VIII is treating the effects of a condition associated with an effect of pro-inflammatory cytokines comprising administering a chemically

modified or mutated EPO having an attached PEG molecule. The special technical feature of Group IX is testing chemically modified or mutated EPO.

The inventions of Groups I-IX are directed to methods that recite functionally distinct steps, are not required one for the other and/or achieve different goals and thus do not share a common special technical feature. Each method has acquired a separate status would require its own search of the literature databases. In addition, the methods are drawn to treating different patient populations. A search to identify documents relevant to the patentability of the claimed methods would not necessarily employ the same or similar search terms and techniques to identify relevant documents. As such, it would be burdensome to search the inventions of Groups I-XVIII together.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows: Chemically modified or mutated EPOs

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant is required to elect **one EPO species from claim 42** and **one muted EPO species** (i.e. pick one EPO mutated species from claims 43, 44 **OR** 45).

The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner: claims 42-45.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The species comprise distinct sequences because they are composed of unrelated or diverse sequences, different coding regions and/or impart structural and functional differences.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, the search requires a different non-patent literature search due to each group comprising recognized divergent subject matter, different products and/or method steps, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (571) 272-0882. The examiner can normally be reached on 9:00 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manjunath N. Rao can be reached on (571) 272-0939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marianne P. Allen/
Primary Examiner, Art Unit 1647

RMD
6/1/08